SUPREME COURT, U. S.
No. 138

JUL 5 1961

JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1961

PUEBLO DE PECOS, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Indian Claims Commission (Pet. App. 19-34) is reported at 8 Ind. Cl. Comm. 195. The order of the Court of Claims affirming the Indian Claims Commission (Pet. App. 18) is not reported.

JURISDICTION

The order of the Court of Claims affirming the Indian Claims Commission was entered on March 10, 1961. The petition for a writ of certiorari was filed on June 7, 1961. The jurisdiction of this Court

is invoked under 28 U.S.C. 1255(1) and Section 20(c) of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 1054, 25 U.S.C. 70s(c).

QUESTION PRESENTED

Whether an award made by the Pueblo Lands Board is *res judicata* of a claim brought under the Indian Claims Commission Act.

STATUTES INVOLVED

The pertinent parts of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70-70v, and of the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, are set out in the petition at pages 4 to 12.

STATEMENT

The petitioners brought this action to recover the difference between the sum of $28,145.00, the amount paid them by the United States in 1931 pursuant to an award made by the Pueblo Lands Board for the loss of a tract of land known as the Pecos Pueblo Grant, and the fair market value of this tract. The United States answered that the award made by the Pueblo Lands Board is *res judicata* of the present claim, and the Indian Claims Commission sustained this contention and dismissed the suit (Pet. App. 19-34).

The Pecos Pueblo Grant is an 18,763.33-acre tract near Santa Fe, New Mexico, to which the United States recognized the petitioner's claim by issuing a patent in 1864. Because of various attempts by the Pueblos to convey their lands and because of extensive settlement by non-Indians, serious conflicts as to title and rights to possession of the lands arose. A Con-

gressional study in 1924 revealed that there were some 3,000 claimants to land within the exterior boundaries of the Pueblo grants in New Mexico. H. Rept. 787, 68th Cong., 1st Sess., Cong. Doc. Ser. No. 8229. To settle the complicated questions of title and to secure for the Indians all of the lands to which they were equitably entitled, or fair compensation for any lands and water rights lost because of a failure by the United States seasonably to prosecute the rights of the Indians, Congress passed the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, establishing the Pueblo Lands Board.

The Board's duties included reporting on Pueblo lands then in the possession of non-Indian claimants. Congress assumed liability in cases where the Board should find that such tracts could be, or at any time could have been, recovered for the Indians by the United States by seasonable prosecution of any right of the United States or of the Indians, and the Board was to determine the amount of loss and award compensation. Section 6 of the Act provided that "[s]uch report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses." Section 6 also provided for appeal to the United States District Court for the District of New Mexico.

The Pueblo Lands Board investigated the claim of the Pueblo de Pecos to the Pecos Pueblo Grant, holding hearings at which the United States furnished legal counsel for the Pueblo (Fdg. 5, Pet. App. 38). The Board determined that the title of the Pueblo de Pecos had been extinguished although the Indians had

never intentionally abandoned their rights (Fdg. 6, Pet. App. 38-42). It further found that "seasonable prosecution upon the part of the Government would have resulted in protecting this Indian claim," and that $1.50 an acre, or $28,145.00, would be a fair award for the loss suffered by the Indians (Fdg. 7, Pet. App. 42-47). No appeal was taken and Congress appropriated the amount recommended in the Act of February 14, 1931, 46 Stat. 1115, 1122.

In the present suit, the petitioner has alleged that the award was not based on fair and honorable dealings; that the Board's proceedings had not given a full opportunity for an investigation and determination of the merits of the claim; that the United States, notwithstanding its guardian-ward relationship to the Indians and the conflict of interest inherent in appearing as guardian before a tribunal it had created, refused the Indians their own legal representation and then negligently failed to represent them fully; and that the Board failed to follow Section 6 of the Pueblo Lands Act. With respect to these allegations the Indian Claims Commission found (Fdg. 8, Pet. App. 47):

> It has not been established that the proceedings of the Pueblo Lands Board as to the Pecos Pueblo Grant were unfairly conducted and did not afford a full investigation and determination of the merits of the Pecos claim. Water rights were considered, as shown by the testimony of members of the Board before a Congressional Committee investigating the matter. The Board was not required to award "interest" or compensation for "loss of use". Neither has it been established that the litigation was negligently conducted by counsel for the Pecos. After a subsequent investi-

gation of the awards of the Board, Congress gave additional compensation to certain Pueblos but did not increase the amount of the Pecos award.

The Commission also found that the Board's award had not been appealed and was therefore, in accordance with Section 6 of the Pueblo Lands Act, a "'final judgment upon the question and amount of compensation due' to the Pueblo de Pecos from the United States" (Fdg. 9, Pet. App. 48). On the basis of these findings, the Commission concluded that the Board's award was *res judicata* of the petitioner's claim and therefore dismissed the suit (Pet. App. 33-34). The Court of Claims affirmed this judgment without opinion (Pet. App. 18).

ARGUMENT

This case presents nothing more than a simple application of the principle of *res judicata*. The Pueblo Lands Act gave awards of the Pueblo Lands Board "the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States * * *." The petition before the Indian Claims Commission in this case alleges that an award made to the Pueblo de Pecos under the Pueblo Lands Act was not based upon fair and honorable dealings and that the Indians were not given a full and fair hearing, but the Commission found that the proof failed to sustain these allegations (Fdg. 8, Pet. App. 47). Having failed to sustain these allegations, the petitioners have nothing more than a suit to relitigate the issues decided by the Pueblo Lands Board, a suit obviously *res judicata*. The Court of Claims has consistently

held that *res judicata* bars relitigation of claims under the Indian Claims Commission Act. *Blackfeet etc. Indians* v. *United States,* 127 C. Cls. 807, certiorari denied, 348 U.S. 835, *Western Cherokee Indians, et al.* v. *United States,* 116 C. Cls. 665, certiorari denied, 340 U.S. 904.

CONCLUSION

For the foregoing reasons, we submit that the petition for a writ of certiorari should be denied.

Respectfully,

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JULY, 1961

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